UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

LOCAL RULES:

GENERAL, CIVIL, AND CRIMINAL

January 31, 2001

(Approved by District Judges following public comment, January 24, 2001)

LOCAL RULES COMMITTEE
FOR THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
1999-2000

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INTRODUCTION

The Local Rules are divided into three parts: (1) General Local Rules applicable to civil and criminal cases, (2) Civil Local Rules applicable only to civil cases, and (3) Criminal Local Rules applicable only to criminal cases. Each part begins with a rule defining the scope of the part.

Following the recommendation of the Judicial Conference, the numbering of the Local Rules has been tied to the Federal Rules of Civil Procedure and, in the case of the Criminal Local Rules, to the Federal Rules of Criminal Procedure.

Some of the following rules are similar to certain Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Local Rules do not, however, repeat the Federal Rules in their entirety, and practitioners are advised to consult both the Local Rules and applicable Federal Rules.

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PART A:
GENERAL RULES

I. SCOPE OF RULES

General L.R. 1.1 Scope of Rules

The General Rules set forth in Part A govern both civil and criminal proceedings in this district. The rules set forth in Part A, Part B, and Part C govern civil and criminal litigation in this district. Compliance with the rules is expected. However, the rules are intended to be enforced primarily upon the Court's own initiative, and the filing of motions alleging noncompliance with a rule may be reserved for egregious cases.

General L.R. 3.1 Assignment of Cases

(a) **Civil Cases**

(1) At the time an action is filed, except as otherwise provided by general order of the Court, the case must be randomly assigned to a district judge or a magistrate judge. The Clerk of Court must provide the party filing the action with a form advising all parties of their right to consent to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). The plaintiff must serve each defendant with a consent form, together with the summons and complaint. In the case of actions removed from state court, the defendant must serve each other party with a consent form, together with the notice of removal. Each party to the action must return the completed consent form to the Clerk of Court within 20 days after service of the form.

(2) In cases assigned to a district judge, a magistrate judge must also be assigned. If the parties consent to the magistrate judge's jurisdiction pursuant to 28 U.S.C. § 636(c), the district judge may refer the case to the magistrate judge by written order, and the parties will be notified of such reference by the Clerk of Court. Whether or not the parties have consented to the reference of the case to the magistrate judge, the district judge assigned to the case may designate the magistrate judge to perform any of the duties authorized by these local rules, including conducting an ADR process.

(3) The Court may by general order require the Clerk of Court to refer certain categories of the district judges' cases to the magistrate judges for such pretrial processing as specified in the order.

(b) **Criminal Cases**

Upon the return of an indictment or the filing of an information, all felony criminal cases must be assigned by a method of random allocation to a judge and magistrate judge of this Court.

II. PAPERS AND FILING

General L.R. 5.1 General Format of Papers Presented for Filing

(a) All legal papers in an action, except those filed in pro se litigation, habeas corpus proceedings, bankruptcy appeals, social security reviews, United States collection cases, and cases transferred from another district, must be filed in the form of an original and one copy. If a complaint is tendered without a copy, the Clerk of Court must accept and file it but take no further action until the copy has been provided. The judge or magistrate judge to whom the case is assigned may waive this requirement.

(b) In addition to the information required by Fed.R.Civ.P. 11(a), an attorney must include on every legal paper a telephone number and may include a fax number and e-mail address. A pro se litigant must include a telephone number, if available.

(c) All legal papers filed must be on 8 1/2 x 11-inch paper and must be fastened at the top without backing or special binding.

General L.R. 5.2 Place of Filing

All legal papers must be filed in the office of the Clerk of Court and not in the chambers of the judge or magistrate judge. The Clerk of Court must retain the original of the paper filed, except the original of an order submitted for signature, and must transmit the copy to the judge or magistrate judge. If a legal paper is filed less than 48 hours before the Court has stated it is due in the chambers of the Court, the attorney or the person making the filing is responsible for transmitting a copy to the chambers of that judge or magistrate judge.

III. DISCOVERY AND TRIALS

General L.R. 16.1 Trial Time Limits

After consideration of the final pretrial reports filed under Civil L.R. 16.1, or at such other time as the Court may direct, judges and magistrate judges may establish reasonable time limits for the trial of all civil and criminal cases.

General L.R. 26.1 Sequential Numbering of Exhibits

Documents identified as exhibits during the course of depositions, other pretrial proceedings, and at trial must be numbered sequentially. Only one exhibit number shall be assigned to any given document or physical object throughout the course of the action. Numbers 1-999 shall be reserved for plaintiff's/prosecution's exhibits, and numbers 1000-1999 shall be reserved for defendant's exhibits. If more than two parties appear in the litigation, successive blocks of 1000 shall be reserved for each additional party starting with 2000-2999.

General L.R. 40.1 Inquiries

All inquiries concerning any pending action must be directed to the office of the judge or magistrate judge to whom the case is assigned, except inquiries as to whether or not there is a docket entry for a particular item. Inquiries about docket entries must be directed to the Clerk of Court.

General L.R. 43.1 Examination of Witnesses

Unless otherwise ordered, only one attorney for each party shall examine or cross-examine a witness.

General L.R. 47.1 Voir Dire of Prospective Jurors

Unless otherwise ordered, the voir dire examination of prospective jurors must be conducted by the Court. Counsel should submit written proposed questions for voir dire. Counsel should request such additional questions as they deem necessary in light of prospective jurors' responses to the Court's examination.

General L.R. 47.2 Juror Questionnaires

Jury qualification questionnaires must be available for inspection in the office of the Clerk of Court at any time after the jury panel has been notified to appear.

General L.R. 47.3 Attorney Communications with Jurors

This rule applies to any communication before trial with members of the venire from which the jury will be selected, as well as any communication with members of the jury during trial, deliberations, and after the return of a verdict. No attorneys appearing in any branch of this Court, or any of their agents or employees, shall approach, interview, or communicate with any member of the jury except on leave of Court granted upon notice to opposing counsel and upon good cause shown. Good cause includes a trial attorney's request for permission to contact one or more jurors after trial for the trial attorney's educational benefit. The juror(s) must be advised at the outset of any communication that his or her participation is voluntary. Any juror contact permitted by the Court under this rule must be subject to the control of the Court.

General L.R. 51.1 Jury Instructions

Counsel must submit written proposed jury instructions and, if required, a written form of verdict before the commencement of the trial. Further instructions may be submitted after the commence-ment of the trial as permitted by the Court.

IV. MAGISTRATE JUDGES

General L.R. 72.1 Duties Under 28 U.S.C. § 636(a) and (b)

The magistrate judge is authorized to exercise all of the powers and duties set forth in 28 U.S.C. § 636(a) and (b), and is authorized to perform any and all additional duties, as may be assigned from time to time which are not inconsistent with the Constitution and laws of the United States.

General L.R. 72.2 Assignment of Duties

(a) The assignment of duties to the magistrate judges by the district judges of the Court should be made by standing order entered jointly, or by any individual district judge, in any case assigned to the judge, through written order or oral directive made or given with respect to such case or cases.

(b) The duties authorized to be performed by magistrate judges, when assigned to them pursuant to Paragraph (a) of this local rule, include, but are not limited to:

(1) Issuance of search warrants pursuant to Fed.R.Crim.P. 41, issuance of seizure warrants pursuant to applicable law, issuance of orders for a pen register or a trap and trace device (18 U.S.C. §§ 3122, 3123) and issuance of administrative inspection warrants upon proper application meeting the requirements of applicable law.

(2) Issuance of complaints and appropriate summonses or arrest warrants for the named defendants. (Fed.R.Crim.P. 4.)

(3) Conducting initial appearance proceedings. (Fed.R.Crim.P. 5.)

(4) Appointment of counsel for indigent persons, approval of attorneys compensation and expense vouchers, and all other duties in conformance with the Court's Criminal Justice Act Plan.

(5) Conducting preliminary examinations. (Fed.R.Crim.P. 5.1; 18 U.S.C. § 3060.)

(6) Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed.R.Crim.P. 40.)

(7) Issuance of writs of habeas corpus ad testificandum and habeas corpus ad pre-sequendum. (28 U.S.C. § 2241(c)(5).)

(8) Release or detention of material witnesses. (18 U.S.C. § 3144.)

(9) Issuance of warrants and conduct of extradition proceedings pursuant to 18 U.S.C. § 3184.

(10) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (28 U.S.C. § 2007.)

(11) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or given testimony. (26 U.S.C. § 2007.)

(12) Conducting post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in misdemeanor and other petty offense cases with the consent of the defendant, when required, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Fed.R.Crim.P. 10, 11(a), 32(c), and 58.)

(13) Acceptance of the return of an indictment by the grand jury, issuance of process thereon and, on motion of the United States, ordering dismissal of a complaint. (Fed.R.Crim.P. 6(f) and 48(a).)

(14) Supervision and determination of all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed.R.Crim.P. 12, 12.2(c), 14, 15, 16, 17, 17.1, and 28, 18 U.S.C. § 4244 orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge must not grant a motion to dismiss or quash an indictment or information, or a motion to suppress evidence, or any other case dispositive motion, but should make recommendations to the district judge concerning them.

(15) Conducting hearings and issuing orders upon motions arising out of grand jury proceedings including orders entered pursuant to 28 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (with appropriate safeguards).

(16) Conducting hearings and issuing orders arising out of motion for return of property pursuant to Fed.R.Crim.P. 41(e), except to the extent that the motion is treated as a motion to suppress under Fed.R.Crim.P. 12, and then it must be handled in accordance with Subparagraph (b)(14) of this rule.

(17) Conducting preliminary hearings in all probation or supervised release revocation proceedings, and conducting final hearing for misdemeanors when the defendant has previously consented to the exercise of jurisdiction by the magistrate judge. (Fed.R.Crim.P. 32.1.)

(18) Processing and reviewing habeas corpus petitions filed pursuant to 28 U.S.C. § 2241 et seq., those filed by state prisoners pursuant to 28 U.S.C. § 2254, or by federal prisoners pursuant to 28 U.S.C. § 2255, and civil suits filed by state prisoners under 42 U.S.C. § 1983, with authority to require responses, issue orders to show cause and such other orders as are necessary to develop a complete record, including the conduct of evidentiary hearings, and the preparation of a report and recommendation to the district judge as to appropriate disposition of the petition or claim.

(19) Supervision and determination of all pretrial proceedings and motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting pretrial conferences; except that a magistrate judge (absent the consent of all affected parties) must not appoint a receiver, issue an injunctive order pursuant to Fed.R.Civ.P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed.R.Civ.P. 23, enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed.R.Civ.P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed.R.Civ.P. 41(b) or (c) or enter any other final order or judgment that would be appealable if entered by a district judge, but should make recommendations to the district judge concerning them.

(20) Conducting mediation conferences, or other ADR procedures, pursuant to the district's ADR program.

(21) Conducting all proceedings in civil suits after judgment incident to the issuance of writs of replevin, garnishment, attachment or execution pursuant to governing state or federal law, and conducting all proceedings and entering all necessary orders in aid of execution pursuant to Fed.R.Civ.P. 69.

(22) With the consent of the parties, conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the judge.

(23) Processing and reviewing all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judge concerning the disposition of the case.

(24) Serving as a special master in accordance with Fed.R.Civ.P. 53.

(25) In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security pursuant to Rule C(5), Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceedings.

(26) Appointing persons to serve process pursuant to Fed.R.Civ.P. 4(c).

(27) Processing and reviewing petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.

(28) Supervising proceedings conducted pursuant to letters rogatory in accordance with 28 U.S.C. § 17.

General L.R. 72.3 Appeals From or Objections to Magistrate Judge's Determination

(a) Within 10 days after a timely objection to a magistrate judge's determination concerning a non dispositive matter (see Fed.R.Civ.P. 72(a)), any other party may serve and file a response to the objection or objections. The objecting party may serve and file a reply within 5 days after service of any such response.

(b) If a timely objection to a magistrate's proposed findings, recommendations, or report on a dispositive pretrial matter is made (Fed.R.Civ.P. 72(b)) and another party files a timely response, then the objecting party may serve and file a reply within 5 days after service of any such response.

General L.R. 72.4 Record of Proceedings Before Magistrate Judge

(a) The magistrate judge must determine, after taking into account the complexity of the particular matter, whether the record must be taken down by a reporter or recorded by suitable sound equipment.

(b) Notwithstanding the magistrate judge's determination:

(1) The proceeding must be taken down by a reporter if any party so requests;

(2) The proceeding must be recorded by suitable sound equipment if all parties agree;

(3) No record need be made of the proceeding if all parties agree.

General L.R. 73.1 Duties Under 28 U.S.C. § 636(c)

The magistrate judges in this district are designated to exercise the jurisdiction and authority provided by 28 U.S.C. § 636(c), when all parties consent thereto, and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case.

V. DISTRICT COURT AND CLERK OF COURT

General L.R. 77.1 Sessions of the Court

The Court is in continuous session.

General L.R. 79.1 Custody of Exhibits

All exhibits received in evidence must be placed in the custody of the Clerk of Court unless otherwise ordered by the Court.

General L.R. 79.2 Return of Exhibits, Depositions and Briefs

Within 30 days (60 days for cases in which the United States is a party) after the time for appeal has elapsed and, if there is an appeal, after the filing of the mandate of the reviewing Court, the Clerk of Court must return all exhibits and depositions to the attorneys of record for the respective parties. The Clerk of Court may return such items by certified mail, or upon 10 days' written notice, require the attorneys of record to remove them. Any exhibits, depositions or briefs not removed within the time specified for such removal, may be destroyed or otherwise disposed of by the Clerk of Court.

General L.R. 79.3 Withdrawal of Materials in Court Files

No pleading, brief, deposition, exhibit or other material belonging in the file of a case may be withdrawn by any person without an order of the Court, except as provided in General L.R. 79.2. Prior to final disposition of the case, the order must be entered by a judge or magistrate judge. After final disposition, the order may be entered by the Clerk of Court, but only if the withdrawal is by a member of the bar of this Court. In either event, such order must specify the time for return of such materials.

General L.R. 79.4 Confidential Matters

(a) Grand Jury Proceedings. All subpoenas, motions, pleadings and other documents concerning or contesting ongoing grand jury proceedings must be submitted to the Clerk of Court in a sealed envelope conspicuously marked "SEALED" and must be treated as confidential documents.

(b) All documents which a judge or magistrate judge has ordered to be treated as confidential must be filed in a sealed envelope conspicuously marked "SEALED".

(c) Subject to General L.R. 83.9(c) and Civil L.R. 26.4, the Court will consider all documents to have been filed publicly unless they are accompanied by a separate motion requesting that the documents, or portions thereof, be sealed by the Court.

(d) All documents which a party seeks to have treated as confidential, but as to which no sealing order has been entered, must be filed in a sealed envelope conspicuously marked "Request for Confidentiality Pending," together with a motion requesting an appropriate order. The separate motion for sealing must be publicly filed and must generally identify the documents contained

in the sealed envelope. The documents must be transmitted by the Clerk of Court in a sealed envelope to the judge or magistrate judge, together with the moving papers. If the motion is denied, the documents must be filed by the Clerk of Court in an open file, unless otherwise ordered by the judge or magistrate judge assigned to the case.

General L.R. 80.1 Duties of Court Reporters

The official court reporters must attend each session of the Court and at every other proceeding that may be designated by rule of procedure or order of Court and must record verbatim by shorthand or by mechanical means (1) all proceedings in all criminal cases held in open court; (2) all proceedings in all other cases held in open court; and (3) such other proceedings as the Court may order or as may be required by any rule of procedure.

General L.R. 80.2 Transcript Fees

The fee per page of transcript which the court reporters may charge may equal the highest amount authorized at the last Judicial Conference of the United States at which any such fees were promulgated.

VI. GENERAL PROVISIONS

General L.R. 83.1 Limitations on Photographing, Broadcasting, and Recording

Taking of photographs or recordings and broadcasting of radio or television are prohibited in any of the courtrooms, jury rooms adjacent to said courtrooms, libraries and corridors located on the second, third and fourth floors of the Federal Courthouse, without first obtaining written permission from the person in charge of said offices. The foregoing prohibitions apply to judicial proceedings, including proceedings before a magistrate judge, but do not apply to ceremonial proceedings.

General L.R. 83.2 Disturbances

Causing of a disturbance or nuisance in the Federal Courthouse is prohibited. Picketing or parading outside of the Federal Courthouse is prohibited only when such picketing or parading obstructs or impedes the orderly administration of justice.

General L.R. 83.3 Contempt

The United States Attorney may require any person who violates General L.R. 83.1 or 83.2 to appear before a judge to answer to a charge of contempt.

General L.R. 83.4 Enforcement

The United States Marshal, the Marshal's deputies and the custodian of the Federal Courthouse must enforce General L.R. 83.1 and 83.2, either by ejecting violators from the building or by bringing the matter to the attention of the United States Attorney.

General L.R. 83.5 Appearance Before Court

All parties to actions filed in or removed to this Court must appear either pro se or by an attorney admitted to practice in this Court.

General L.R. 83.6 Eligibility for Admission to Practice

Any licensed attorney in good standing before any United States court, the highest court of any State, or the District of Columbia is eligible for admission to practice in this Court.

General L.R. 83.7 Procedure for Admission to Practice

(a) An eligible attorney who seeks admission to general practice in this Court or for purposes of a particular case (pro hac vice) must:

(1) Apply by mail or in person for admission on a form to be prescribed by the Clerk of Court.

(i) By Mail. Present to the Clerk of Court (1) a certificate of good standing from any United States court, the highest court of any State, or the District of Columbia or (2) the affidavit or sworn statement of an attorney admitted to general practice in this Court that the applicant is an attorney in good standing in one of said courts.

(ii) In Person. Present to the Clerk of Court either the documents required for admission by mail described in subparagraph (a)(1)(i) or the oral attestation of a member of the bar of this Court.

(2) File with the Clerk of Court the following oath subscribed and sworn to before any person authorized to administer oaths:

I do solemnly swear that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will demean myself as an attorney and counselor of the United States District Court for the Eastern District of Wisconsin uprightly and according to law.

Thereupon, after payment of the prescribed fee to the Clerk of Court, the applicant must be admitted to practice before this Court by order of the Clerk of Court.

(3) At the special request of the applicant and upon motion of a member of this Court and after payment of the prescribed fee, an eligible attorney may also be admitted ceremonially before a judge or magistrate judge. The judge or magistrate judge may permit an eligible attorney to proceed in a particular matter (pro hac vice) without payment of the prescribed fee.

(b) This local rule makes motions to proceed pro hac vice unnecessary and the Clerk of Court must not accept such motions.

General L.R. 83.8 Assistance of Local Counsel

At any time, upon its own motion, the Court may require that a nonresident attorney obtain local counsel to assist in the conduct of the case.

General L.R. 83.9 Certificate of Interest and Use of Pseudonyms

(a) To enable the Court to determine whether recusal is necessary or appropriate, an attorney for a nongovernmental party or an amicus curiae must furnish a certificate of interest stating the following information:

(1) The full name of every party or amicus the attorney represents in a case.

(2) If such party or amicus is a corporation:

(i) Its parent corporation, if any; and

(ii) A list of corporate stockholders which are publicly held companies owning 10 percent or more of the stock of the party or amicus.

(3) The names of all law firms whose partners or associates appear for a party or are expected to appear for the party in this Court.

(b) The certificate must be served and filed with the appearance of the party or attorney or upon the first filing of any paper on behalf of the party, whichever occurs first. The certificate must be in the following form:

[CAPTION]

The undersigned, counsel of record for [John Doe, plaintiff], furnishes the following list in compliance with General L.R. 83.9:

[Listed by Number Category]

_____
Attorney's Signature

_____
Date

(c) A plaintiff who initiates a civil action using a pseudonym instead of the plaintiff's actual name must indicate in the Certificate of Interest filed with the Clerk of Court and served on all other parties that the plaintiff has initiated the civil action using a pseudonym. At the same time, however, the plaintiff must file, but not serve, a Certificate of Interest under seal that identifies the plaintiff's actual name and provides the other information required in subsection (a) of this rule. The envelope in which the Certificate of Interest is filed must state prominently that the enclosed Certificate of Interest is being filed under seal pursuant to General L.R. 83.9(c). Within 20 days of the service of the complaint, the plaintiff must file and serve a motion seeking permission to continue to proceed using a pseudonym.

General L.R. 83.10 Disbarment and Discipline

(a) The standards of conduct of the members of the bar of this Court, of government attorneys, and of nonresident attorneys admitted to practice before this Court must be those prescribed by the Rules of Professional Conduct for Attorneys, SCR:20: 1.1-8.5, as such may be adopted from time to time by the Supreme Court of Wisconsin and except as such may be modified by this Court. After notice and opportunity to be heard, any member of the bar of this Court who violates such standards of conduct may be disbarred from practice before this Court, suspended from practice for a definite time, reprimanded, or subject to such other discipline as the Court may deem proper. This subsection is not a restriction on the Court's contempt power.

(b) Notwithstanding the provisions of subparagraph (a), upon learning that any attorney admitted to practice in this Court has been disbarred or suspended from practice (other than for the nonpayment of dues) by the highest Court of any state in which the attorney is licensed, the Court must suspend the attorney from practice before this Court. The attorney must thereupon be afforded a hearing as to reinstatement within 30 days from the date of mailing of a notice of suspension and of the provisions of this rule. Any attorney of the bar of this Court who is disbarred, or subjected to other discipline in any other jurisdiction, must promptly report the matter to this Court.

(c) The Court, in its discretion, may report any allegation of unethical conduct to the appropriate authority regulating the practice of law in any jurisdiction in which the attorney must be admitted to practice law.

PART B:

CIVIL RULES

I. SCOPE OF RULES

Civil L.R. 1.1 Scope of Rules

The Civil Rules set forth in Part B govern all civil proceedings in this district.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

Civil L.R. 3.1 Civil Cover Sheet

(a) The Clerk of Court is authorized and instructed to require a complete and executed AO Form JS-44(a), Civil Cover Sheet, which must accompany each civil case to be filed.

(b) Persons filing civil cases, who at the time of such filing are in the custody of civil, state, or federal institutions, and persons filing civil cases pro se are exempt from the foregoing requirements.

(c) Where the Civil Cover Sheet indicates a pending related case, the new case must be assigned to the same judge.

Civil L.R. 3.2 Payment of Fee

When required at the time of filing, a party initiating a civil action must pay the filing fee. Petitions for leave to file in forma pauperis can be obtained from the Clerk of Court.

Civil L.R. 4.1 Service of Process Upon the State of Wisconsin or Its Employees When Sued by a State Prisoner Pursuant to 42 U.S.C. § 1983

When service of process upon the State of Wisconsin or its employees is made in an action brought by a state prisoner pursuant to 42 U.S.C. § 1983, the process server, in addition to serving the named defendant or defendants, serve a copy of the summons and complaint upon the Secretary of the Wisconsin Department of Corrections and the Administrator of the Legal Services Division of the Wisconsin Department of Justice as provided in Fed.R.Civ.P. 4(j).

III. PLEADINGS AND MOTIONS

Civil L.R. 7.1 Motion Practice

(a) Every motion must set forth the rule pursuant to which it is made and, except for those brought under Civil L.R. 7.4 (Expedited Non-Dispositive Motion Practice), must be accompanied by (1) a supporting brief and, when necessary, affidavits or other documents, or (2) a certificate of counsel stating that no brief or other supporting documents will be filed. If the movant fails to comply with either (1) or (2) above, the Court may deny the motion as a matter of course.

(b) On all motions other than those for summary judgment or those brought under Civil L.R. 7.4 (Expedited Non-Dispositive Motion Practice), the opposing party must serve a response brief and, when necessary, affidavits or other documents within 21 days of service of the motion. The movant may serve a reply brief and, when necessary, affidavits or other documents, within 14 days from the service of the response brief.

(c) On motions for summary judgment, the opposing party must serve a response answering brief and affidavits or other documents within 30 days of service of the motion; the movant may serve a reply brief and, when necessary, affidavits or other documents within 15 days of service of the response brief. Parties must also comply with Civil L.R. 56.2 regarding additional summary judgment motion procedures.

(d) All filings under this rule must indicate the date and method of service. On a showing of good cause, the Court may extend the time for the filing of any brief. Failure to file a timely brief shall be deemed a waiver of the right to submit it. All papers served under this rule must be filed promptly. (See Fed.R.Civ.P. 5(d).)

(e) Oral argument, if deemed appropriate, may be scheduled at the discretion of the judicial officer.

(f) Except by permission of the Court, principal briefs on motions must not exceed 30 pages and reply briefs must not exceed 15 pages, exclusive of pages containing the statement of facts, the proposed findings of fact as required by Civil L.R. 56.2, exhibits, and affidavits, but inclusive of headings and footnotes. A reply brief and any affidavits or other documents filed with the reply brief must be limited to matters in reply.

Civil L.R. 7.2 Evidentiary Hearings

In the case of any motion in which an evidentiary hearing is scheduled by the Court, the parties must file a statement of uncontested facts. It is the responsibility of the movant to submit a proposed stipulation of facts to opposing counsel who must admit or deny the facts proposed and advance any additional facts to be included. A final statement of uncontested facts signed by counsel for the parties must be filed with the Court at least 48 hours before the time set for hearing.

Civil L.R. 7.3 Modification of Provisions in Particular Cases

The Court in any case, may provide by order or other notice to the parties that different or additional provisions regarding motion practice apply.

Civil L.R. 7.4 Expedited Non-Dispositive Motion Practice

(a) Parties in civil actions may seek non-dispositive relief by expedited motion. The motion must be designated as a "Rule 7.4 Expedited Non-Dispositive Motion." The Court may schedule the motion for hearing or may decide the motion without hearing. The Court may designate that the hearing be conducted by telephone conference call. The Court may order an expedited briefing schedule. Counsel must serve the motion on all other parties and promptly file the motion with the Court.

(b) The motion must contain the material facts, argument, and, if necessary, counsel's certification pursuant to Civil L.R. 37.1. The motion must not exceed 3 pages. The movant must not file a separate memorandum with the motion. The movant may file with the motion an affidavit for purposes of (1) attesting to facts pertinent to the motion and/or (2) authenticating documents relevant to the issue(s) raised in the motion. The movant's affidavit may not exceed 2 pages. The respondent must file a memorandum in opposition to the motion within 5 days of service of the motion, unless otherwise ordered by the Court. The respondent's memorandum must not exceed 3 pages. The respondent may file with its memorandum an affidavit for purposes of (1) attesting to facts pertinent to the respondent's memorandum and/or (2) authenticating documents relevant to the issue(s) raised in the motion. The respondent's affidavit may not exceed 2 pages.

(c) The provisions of this rule must not apply to actions brought by incarcerated persons under 42 U.S.C. § 1983 in which the incarcerated person is proceeding pro se.

Civil L.R. 9.1 Standard Forms for Habeas Corpus Proceedings

Petitions for writs of habeas corpus by persons in state custody filed pursuant to 28 U.S.C. § 2254, and motions attacking sentences imposed by this Court filed pursuant to 28 U.S.C. § 2255 must be on forms supplied by the Court and must be filed with the Clerk of Court. The forms and directions for their preparation must be provided without charge by the Clerk of Court.

Civil L.R. 9.2 Standard Forms for 42 U.S.C. § 1983 Actions (Pro Se)

All incarcerated persons proceeding pro se who bring actions under 42 U.S.C. § 1983 are strongly encouraged to use forms supplied by the Court. The forms and directions for their preparation will be provided without charge by the Clerk of Court. Use of the forms will enable the Court to more efficiently and effectively evaluate and process the case.

Civil L.R. 10.1 Responsive Pleadings

Responsive pleadings must be made in numbered paragraphs corresponding to the paragraphs of the pleading to which it refers.

Civil L.R. 12.1 Motions to Dismiss In Pro Se Litigation

The procedure set forth in Civil L.R. 56.1(a) must also apply to motions to dismiss brought pursuant to Fed.R.Civ.P. 12(b)(6) or motions for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c) where matters outside the pleading are presented to the Court.

Civil L.R. 15.1 Motions to Amend Pleadings

A motion to amend a pleading must specifically state in the motion what changes are sought by the proposed amendments. Any party submitting a motion to amend must attach to the motion the original of the proposed amended pleading. Any amendment to a pleading, whether filed as a matter of course or upon motion to amend, must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference. If the motion to amend is granted, the clerk must then detach the amended pleading and file it when the order granting the motion to amend is filed.

Civil L.R. 16.1 Preliminary Pretrial Conferences

(a) The Court may require the parties to appear to consider the future conduct of the case. Whether these preliminary pretrial conferences are designated as status conferences, scheduling conferences, discovery conferences, or in any other manner, at each conference in civil actions counsel must be prepared to discuss the matters enumerated in Fed.R.Civ.P. 16 and Fed.R.Civ.P. 26(f). In all actions, counsel may be prepared to state:

(1) The nature of the case in one or two sentences;

(2) Any motions which are contemplated;

(3) The amount of further discovery each party contemplates and the approximate time for completion of such discovery;

(4) Such other matters as may affect further scheduling of the case for final disposition;

(5) Whether settlement discussions have occurred; and

(6) The basis for the Court's subject matter jurisdiction.

(b) At or following the conference, the Court may enter any orders which appear necessary to aid in further scheduling the action, including dates for further conferences, briefing, schedules for motions, and cutoff dates for completing discovery. The Court may also enter any orders permitted under Fed.R.Civ.P. 16, Fed.R.Civ.P. 26(f), or Civil L.R. 16.5.

Civil L.R. 16.2 Final Pretrial Conference

The Court may require counsel to appear for a final pretrial conference to consider the subjects specified in Fed.R.Civ.P. 16 or to consider other matters determined by the Court. At or following the conference, the Court may issue any orders which appear necessary to insure the parties' completion of trial preparations or to aid the Court in the conduct of the trial. Unless excused by the Court, the principal trial counsel for each party must appear at the final pretrial conference.

Civil L.R. 16.3 Pretrial Report

(a) Unless otherwise ordered by the Court, each party must file a pretrial report. Unless the Court establishes a different date, any such pretrial report must be filed at least 10 days prior to the scheduled start of the trial or, if a final pretrial conference is scheduled, 3 days before the final pretrial conference. The report-standardized for all courts-must be in the following form:

PRETRIAL REPORT
(effective [*date*])

IT IS ORDERED that all parties prepare and file pretrial reports. Reports are due 10 days before the scheduled start of the trial or, if a final pretrial conference is scheduled, 3 days before the conference. The report must be signed by the attorney (or a party personally, if not represented by counsel) who will try the case. Sanctions, which may include the dismissal of claims and defenses, may be imposed if a trial report is not filed.

The report must include the following:

(1) A short summary statement of the facts of the case and theories of liability or defense. The statement may not be longer than two pages.

(2) A statement of the issues.

(3) The names and addresses of all witnesses expected to testify. A witness not listed will not be permitted to testify absent a showing of good cause.

(4) If expert witnesses are to be used, a narrative statement of the experts' background.

(5) A list of exhibits to be offered at trial, sequentially numbered according to General L.R. 26.1.

(6) A designation of all depositions or portions of transcripts or other recordings of depositions to be read into the record or played at trial as substantive evidence. Reading or playing more than 5 pages from a deposition will not be permitted unless the Court finds good cause.

(7) Counsel's best estimate on the time needed to try the case.

(8) If scheduled for a jury trial:

(a) All proposed questions that counsel would like the Court to ask on voir dire.

(b) Proposed instructions on substantive issues.

(c) A proposed verdict form.

(9) If scheduled for a court trial, proposed findings of fact and conclusions of law. (See Fed.R.Civ.P. 52.)

_____

United States District Court
Eastern District of Wisconsin

(b) In addition to completing a report, counsel are expected to confer and make a good faith effort to settle the case. Counsel are also expected to arrive at stipulations that will save time during the trial.

Civil L.R. 16.4 Alternative Dispute Resolution--Importance of Process

The Court recognizes that full, formal litigation of claims can impose large economic burdens on parties and delay resolution of disputes for considerable periods. The Court recognizes that alternative dispute resolution (ADR) can improve the quality of justice by improving the parties' clarity of understanding of their case, their access to evidence, and their satisfaction with the process and results. Accordingly, the Court has established an ADR program to provide litigants with a quicker, less expensive and potentially more satisfying alternative to continuing litigation without impairing the quality of justice or the right to trial.

Civil L.R. 16.5 Alternative Dispute Resolution--Participation in Process

(a) Each judge must conduct an ADR evaluation conference during the early stages of case development to determine whether a civil case is appropriate for ADR. This conference may be held in conjunction with a pretrial conference under Fed.R.Civ.P. 16 or a scheduling conference under Fed.R.Civ.P. 16(b), but may be conducted as a separate conference. If the judge determines that a case is appropriate for ADR, the judge must encourage the parties to participate in a Court-sponsored ADR process. The judge may order the parties to participate in ADR.

(b) The following types of cases are exempt from this procedure: administrative proceedings, including all Social Security cases; habeas corpus cases or other proceedings to challenge a criminal conviction or sentence; pro se prisoner litigation; actions by the United States to recover benefit payments or to collect on a student loan guaranteed by the United States; cases in which the only relief sought is an order compelling arbitration or enforcing an arbitration award; actions to enforce or quash an administrative summons or subpoena; proceedings

ancillary to proceedings in other courts; and mortgage foreclosure actions in which an agency of the United States is a secured party.

Civil L.R. 16.6 Alternative Dispute Resolution--Confidentiality

The Court, the neutral, all counsel and parties, and any other persons attending an ADR session under these rules must treat as confidential all written and oral communications made in connection with or during any ADR session. Except to the extent otherwise stipulated or ordered, the disclosure of any written or oral communication made by any party, counsel, or other participant in connection with or during any ADR session must be prohibited. ADR proceedings pursuant to these rules must be treated as compromise negotiations for purposes of the Federal Rules of Evidence and state rules of evidence. Nothing in this section must be construed to prohibit parties from entering into written agreements resolving some or all of the case or entering and filing procedural or factual stipulations based on suggestions or agreements made in connection with these ADR processes.

Civil L.R. 16.7 Alternative Dispute Resolution--Evaluation of Program

Congress has mandated that the Court's ADR program be evaluated. Neutrals, counsel and clients may promptly respond to any inquiries or questionnaires from persons authorized by the Court to evaluate the program. Responses to such inquiries will be used for research and monitoring purposes only. The identity of persons or entities providing specific information will not be disclosed to the assigned judge or in any evaluation report.

IV. PARTIES

[Reserved.]

V. DISCOVERY

Civil L.R. 26.1 Disclosure of Expert Testimony

(a) Each party must disclose to every other party the substance of all expert witness evidence that the party intends to present at trial, including expert witness evidence of hybrid fact/expert witnesses such as treating physicians.

(b) Except as otherwise directed by the court, the disclosure must be in the form of a written report prepared and signed by the witness which includes a statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered in forming such opinions; any exhibits to be used as a summary of or support for such opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid to the expert; and a listing of any other cases in which the witness has testified as an expert at trial or in deposition within the preceding four years.

(c) Unless the Court designates a different time, the disclosure must be made at least 90 days before the date the case has been directed to be ready for trial, or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Paragraph (a), within 30 days after the disclosure.

Civil L.R. 26.2 Completion of Discovery

Unless the Court orders otherwise, all discovery must be completed 30 days prior to the date on which trial is scheduled. Completion of discovery means that discovery (including depositions to preserve testimony for trial) must be scheduled to allow depositions to be completed, interrogatories and requests for admissions to be answered, and documents to be produced prior to the deadline and in accordance with the provisions of the Federal Rules of Civil Procedure. For good cause, the Court may extend the time during which discovery may occur or may reopen discovery.

Civil L.R. 26.3 Standard Definitions Applicable to All Discovery

(a) The full text of the definitions set forth in paragraph (b) is deemed incorporated by reference in all discovery, may not be varied by litigants, but must not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in paragraph (b).

(b) Definitions. The following definitions apply to all discovery:

(1) Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) Document. The term "document" is defined to be synonymous in meaning and equal in scope of the usage of this term in Fed.R.Civ.P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) Identify.

(i) With Respect to Persons. When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(ii) With Respect to Documents. When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(4) Person. The term "person" is defined as any natural person or any business, legal, or governmental entity, or association.

Civil L.R. 26.4 Confidentiality of Discovery Materials

(a) Upon a showing of good cause, the Court may enter a protective order regarding confidentiality of all documents produced in the course of discovery, all answers to interrogatories, all answers to requests for admission, and all deposition testimony. The protective order may take the following form:

(1) Designation of confidential information must be made by placing or affixing on the document in a manner which will not interfere with its legibility the word "CONFIDENTIAL." One who provides material may designate it as "CONFI-DENTIAL" only when such person/entity in good faith believes it contains trade secrets or nonpublic technical, commercial, financial, personal, or business information. Except for documents produced for inspection at the party's facilities, the designation of confidential information must be made prior to, or contemporaneously with, the production or disclosure of that information. In the event that documents are produced for inspection at the party's facilities, such documents may be produced for inspection before being marked confidential. Once specific documents have been designated for copying, any documents containing confidential information will then be marked confidential after copying but before delivery to the party who inspected and designated the documents. There will be no waiver of confidentiality by the inspection of confidential documents before they are copied and marked confidential pursuant to this procedure.

(2) Portions of depositions of a party's present and former officers, directors, employees, agents, experts, and representatives must be deemed confidential only if they are designated as such when the deposition is taken.

(3) Information or documents designated as confidential under this rule must not be used or disclosed by the parties or counsel for the parties or any persons identified in Subparagraph (4) for any purposes whatsoever other than preparing for and conducting the litigation in which the information or documents were disclosed (including appeals). The parties must not disclose information or documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes has been certified.

(4) The parties and counsel for the parties must not disclose or permit the disclosure of any documents or information designated as confidential under this rule to any other person or entity, except that disclosures may be made in the following circumstances:

(i) Disclosure may be made to employees of counsel for the parties who have direct functional responsibility for the preparation and trial of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure must be advised of, and become subject to, the provisions of this rule requiring that the documents and information be held in confidence.

(ii) Disclosure may be made only to employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was

disclosed who are identified as such in writing to counsel for the other parties in advance of the disclosure of the confidential information.

(iii) Disclosure may be made to court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents. Prior to disclosure to any such court reporter or person engaged in making photocopies of documents, such person must agree to be bound by the terms of this rule.

(iv) Disclosure may be made to consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit. Prior to disclosure to any expert, the expert must be informed of and agree to be subject to the provisions of this rule requiring that the documents and information be held in confidence.

(5) Except as provided in Subparagraph (4), counsel for the parties must keep all documents designated as confidential which are received under this rule secure within their exclusive possession and must place such documents in a secure area.

(6) All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of documents or information designated as confidential under this rule, or any portion thereof, must be immediately affixed with the word "CONFIDENTIAL" if that word does not already appear.

(7) To the extent that any answers to interrogatories, transcripts of depositions, responses to requests for admissions, or any other papers filed or to be filed with the Court reveal or tend to reveal information claimed to be confidential, these papers or any portion thereof must be filed under seal by the filing party with the Clerk of Court in an envelope marked "SEALED." A reference to this rule may also be made on the envelope.

(b) No information may be withheld from discovery on the ground that the material to be disclosed requires protection greater than that afforded by Subdivision (a) of this rule unless the party claiming a need for greater protection moves for and obtains from the Court an order providing such special protection. Any such motion must be made within the time frame contemplated by Fed.R.Civ.P. 34.

(c) The designation of confidentiality by a party may be challenged by the opponent upon motion. The movant must accompany such a motion with the statement required by Civil L.R. 37.1. The party prevailing on any such motion must be entitled to recover as motion costs its actual attorneys fees and costs attributable to the motion.

(d) At the conclusion of the litigation, all material not received in evidence and treated as confidential under this rule must be returned to the originating party. If the parties so stipulated, the material may be destroyed.

Civil L.R. 33.1 Limitation on Interrogatories

(a) Any party may serve upon any other party up to 25 written interrogatories. The 25 permissible interrogatories may not be expanded by the creative use of subparts. The interrogatories are to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who must furnish such information as is available to the party.

(b) For the purpose of computing the number of interrogatories served:

(1) Parties represented by the same attorney or law firm must be regarded as one party.

(2) Interrogatories inquiring about the names and locations of persons having knowledge of discoverable information or about the existence, location, or custodian of documents or physical evidence must not be counted toward the 25 interrogatory limit.

(c) If a party believes that additional interrogatories are necessary, the party may promptly consult with the party to whom the additional interrogatories would be propounded and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. The stipulation must not be filed with the Court unless a motion to compel answers becomes necessary. If a stipulation cannot be reached, the party seeking to serve additional interrogatories may move the Court for permission to serve additional interrogatories. The motion must show the necessity for the relief requested and must be accompanied by a written statement that, after consultation with the adverse party to the motion and after sincere attempts to resolve their differences, the parties are unable to reach an accord concerning the additional interrogatories. The statement must also recite the date and time of such consultation and the names of all parties participating in it.

(d) The Court will not compel a party to answer any interrogatories served in violation of this rule.

Civil L.R. 33.2 Answers to Interrogatories

An objection or an answer to an interrogatory must reproduce the interrogatory to which it refers.

Civil L.R. 34.1 Objection to Request for Production

An objection to a request for production of documents must reproduce the request to which it refers.

Civil L.R. 36.1 Response to Requests for Admission

A response or an objection to a request for admission must reproduce the request to which it refers.

Civil L.R. 37.1 Discovery Motions

All motions for discovery pursuant to Fed.R.Civ.P. 26 through 37 must be accompanied by a written statement by the movant that, after personal consultation with the party adverse to the motion and after

sincere attempts to resolve their differences, the parties are unable to reach an accord. The statement must also recite the date and time of such conference and the names of all parties participating in it.

VI. TRIALS

Civil L.R. 41.1 Dismissal Where No Service of Process

When the plaintiff has not effected service of process within the time required by Fed.R.Civ.P. 4(m), and the defendant has not waived service under Rule 4(d), then on 20 days' notice to the attorney of record for the plaintiff, or the plaintiff if pro se, an order will be entered dismissing the action without prejudice.

Civil L.R. 41.2 Dismissal Where No Answer or Other Pleading Filed

In all cases in which a defendant has failed to file an answer or otherwise defend within 6 months from the filing of the complaint and the plaintiff has not moved for a default judgment, the Court may on its own motion, after 20 days' notice to the attorney of record for the plaintiff, or to the plaintiff if pro se, enter an order dismissing the action for lack of prosecution. Such dismissal must be without prejudice.

Civil L.R. 41.3 Dismissal for Lack of Diligence

Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action, the Court may enter an order of dismissal with or without prejudice. Any affected party can petition for reinstatement of the action within 20 days.

Civil L.R. 41.4 Dismissal of Frivolous Action or Pleading

Whenever it appears to the Court that the plaintiff's complaint, the defendant's answer, including counterclaims, or any other pleading filed by a party is frivolous, without merit or interposed primarily for any improper purpose, the Court may dismiss or strike the pleading without prejudice after 20 days' written notice to the parties.

Civil L.R. 42.1 Consolidation of Cases

(a) When the consolidation of two or more cases is sought, whether for a limited purpose or for all future proceedings, the motion to consolidate and supporting materials must be captioned with the case names and numbers of all cases sought to be consolidated. Service and filing must be effected in all of the cases sought to be consolidated. The motion must be decided by the district judge to whom the lowest numbered case is assigned. If the motion is granted, the judge to whom the lowest numbered case is assigned must handle all future proceedings covered by the consolidation order.

(b) When two or more cases are consolidated, all documents relevant to the purposes for which consolidation was granted will thereafter be docketed only on the docket sheet for the lowest numbered of the consolidated cases. All such documents will be filed in the case file for that case and only the original and one copy of a document must be filed. A notation to check the docket sheet for the lowest numbered case will be entered on the docket sheet(s) for the higher numbered case(s).

(c) If cases are consolidated for some but not all purposes, documents relating to a particular case will be docketed on the docket sheet for that case and be filed only in that case file.

VII. JUDGMENTS

Civil L.R. 54.1 Bill of Costs

(a) The party in whose favor a judgment for costs is awarded or allowed by law and who claims the party's costs must, after the judgment has been entered, serve on the attorney for the adverse parties and file with the Clerk of Court the party's bill of costs. The Clerk of Court's office has forms available for this process or the party may use the party's own forms. Such service and filing must be made not later than 14 days after entry of the judgment. If a timely motion for a new trial or amendment of judgment has been made pursuant to Fed.R.Civ.P. 59, time for filing the bill of costs commences to run from the entry of the order granting or denying such motion. The parties, by filing a stipulation with the Clerk of Court's office, may delay the filing of the bill of costs and taxing until after decision by the Court of Appeals or Supreme Court when an appeal is taken. Absent such a filed stipulation or a court order, the appeal must not delay the taxing of costs.

(b) Unless otherwise determined by the Clerk of Court, the following procedure will apply. The party against whom costs are sought to be taxed has 10 days to file a written objection, accompanied by a brief memorandum. The party seeking to tax costs has 5 days to respond and the objecting party has 5 days thereafter to reply. Costs will be taxed by the Clerk of Court on the basis of the written memoranda.

Civil L.R. 54.2 Items Taxable as Costs

The following is the practice of the Court concerning items of costs not otherwise allowed or prohibited by statute.

(a) Fees of the Court Reporter for All of or Any Part of the Transcript Necessarily Obtained for Use in the Case. The costs of the original transcript, if paid by the taxing party, and the cost of the taxing party's copy (not to exceed the fee of the court reporter set by General L.R. 80.3) are taxable. The costs of a transcript of matters prior or subsequent to trial when necessary for appeal, or when requested by the Court or prepared pursuant to stipulation of the parties and necessarily obtained for use in the case are also taxable. In the case of a daily transcript, the parties must follow Civil L.R. 54.2(e).

(b) Deposition Costs. The court reporter's charge for the original of a deposition, if paid by the taxing party, and the taxing party's copy are taxable if the deposition was reasonably necessary for use in the case, whether or not it was used at trial. Reasonable expenses of the reporter, the presiding notary or other official and postage costs for sending the original deposition to the Clerk of Court for filing are taxable. Counsel's fees and expenses in attending and taking the deposition are not taxable. Per diem attendance fees for a witness at a deposition are taxable as per 28 U.S.C. § 1821. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

(c) Witness Fees, Mileage, and Subsistence. The rate for witness fees, mileage, and subsistence are fixed by statute. (See 28 U.S.C. § 1821 and Civil L.R. 54.2(e).) Such fees are taxable whether or not the witness attends voluntarily or is under subpoena, provided the witness testified at the trial and received a witness fee. No party shall receive witness fees for testifying in his or her own behalf. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable in the case of ordinary witnesses, except in exceptional circumstances by order of the Court.

(d) Costs of copies of papers reasonably necessary for use in the case are taxable. (See 28 U.S.C. § 1920(4).) Papers include, but are not limited to, maps, charts, photographs, summaries, computations and statistical comparisons.

(e) Costs of demonstrative evidence created for use in the case, daily transcripts, witness fees for mileage for trial witnesses coming from outside of the district in excess of 100 miles from the place of trial, and expert witness fees in excess of the statutory allowance, must never be taxed unless the party requesting taxation obtained Court approval on motion for such costs brought prior to the time the costs were incurred, and in the case of demonstrative evidence, prior to the time such evidence is used at trial.

Civil L.R. 54.3 Review of Costs

A party may move for review of the Clerk of Court's decision taxing costs pursuant to Fed.R.Civ.P. 54(d) within 5 days from taxation. The motion, supporting papers and scheduling must conform to Civil L.R. 7.1.

Civil L.R. 56.1 Summary Judgment Motions in Pro Se Litigation

(a) If a party is proceeding pro se in civil litigation, and the opposing party files a motion for summary judgment, counsel for the movant must comply with the following procedure:

(1) The motion must include a short and plain statement that any factual assertion in the movant's affidavit(s) or other admissible documentary evidence will be accepted by the Court as being true unless the party unrepresented by counsel submits the party's own affidavit(s) or other admissible documentary evidence contradicting the factual assertion.

(2) In addition to the foregoing statement, the text to Fed.R.Civ.P. 56(e) and (f), Civil L.R. 56.1 and Civil L.R. 7.1 must be part of the motion.

(b) This procedure also applies to motions to dismiss brought pursuant to Fed.R.Civ.P. 12(b)(6) or motions for judgment on the pleadings pursuant to Fed.R.Civ.P. 12(c) where matters outside the pleading are presented to the Court.

Civil L.R. 56.2 Additional Summary Judgment Motion Procedures

Motions for summary judgment must comply with Fed.R.Civ.P. 56 and Civil L.R. 7.1. In addition, with the exception of Social Security reviews and cases in which a party appears pro se, the following requirements must be met:

(a) Motion. The moving papers must include either (1) a stipulation of facts between the parties, or (2) the movant's proposed findings of fact supported by specific citations to evidentiary materials in the record (e.g., pleadings, affidavits, depositions, interrogatory answers, or admissions), or (3) a combination of (1) and (2).

(1) The movant must present only the factual propositions upon which there is no genuine issue of material fact and which entitle the movant to judgment as a matter of law, including those going to jurisdiction and venue, to the identity of the parties, and to the background of the dispute.

(2) Factual propositions must be set out in numbered paragraphs, with the contents of each paragraph limited as far as practicable to a single factual proposition.

(b) Response. Any materials in opposition to a motion filed under this rule must be filed within 30 days from service of the motion and must include:

(1) A specific response to the movant's proposed findings of fact, clearly delineating only those findings to which it is asserted that a genuine issue of material fact exists. The response must refer to the contested finding by paragraph number and must include specific citations to evidentiary materials in the record which support the claim that a dispute exists.

(2) A party opposing a motion may present additional factual propositions deemed to be relevant to the motion, in accordance with the procedures set out in Subparagraph (a)(2) of this rule. These propositions may include additional allegedly undisputed material facts and additional material facts which are disputed and which preclude summary judgment.

(c) Reply. The movant may serve and file a reply brief within 15 days of service of the response brief. The movant may also respond to the opposing party's proposed findings of fact in accordance with the provisions of subparagraph (b)(1) of this rule.

(d) All factual assertions made in any brief must be supported by both specific citations to evidentiary materials in the record and the corresponding stipulated fact or proposed finding of fact. Parties must file and serve the evidentiary documents cited in their briefs and proposed findings of fact.

(e) In deciding a motion for summary judgment, the Court must conclude that there is no genuine material issue as to any proposed finding of fact to which no response is set out.

Civil L.R. 62.1 Supersedeas Bonds

(a) A supersedeas bond, where the judgment is for a sum of money only, must be in the amount of the judgment plus 15 percent to cover interest and such damages for delay as may be awarded plus $500.00 to cover costs. If eligible under Civil L.R. 77.1(b), the supersedeas bond may be approved by the Clerk of Court.

(b) When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the Court may on notice grant a stay on such terms as to security and otherwise as it may deem proper.

(c) Upon approval, a supersedeas bond must be filed with the Clerk of Court and a copy with a notice of filing shall be promptly served on the parties affected thereby. If the appellee objects to the form of the bond or to the sufficiency of the surety, notice of a hearing before the Court on such objections must be given.

Civil L.R. 67.1 Required Security

In addition to any security required by law, the Court, at any time upon good cause shown, may order original or additional security for costs to be given by any party.

Civil L.R. 67.2 Forms of Security

Security for costs must consist of a cash deposit or a bond, with surety, in the sum of $250.00 unless otherwise ordered, conditioned to secure the payment of costs which the posting party may ultimately be ordered to pay to any party. A corporation authorized by the Secretary of the Treasury of the United States must be accepted as surety on bonds. An individual resident of the district who owns real or personal property within the district, the unencumbered value of which is equal to the amount of the bond, may be accepted by the Court as surety upon a bond. No member of the bar or officer of this Court must be accepted as surety upon any bond or similar undertaking. Any party may raise objections to the form, amount or sufficiency of security for costs.

Civil L.R. 67.3 Deposit of Funds

(a) Upon stipulation of the parties or motion to the Court, the Court may order that the monies paid into Court in any pending or adjudicated case be paid to a trustee other than the Clerk of Court who is nominated by the parties and/or designated by the Court for investment in the following types of securities, interest thereon to inure to the party or parties entitled to said monies. The funds must be invested in the name of the trustee "under order of the United States District Court for the Eastern District of Wisconsin, Case No. _____."

(1) United States Treasury bills.

(2) Accounts, not to exceed the insurance coverage limits in banks or savings and loan associations insured pursuant to the Federal Deposit Insurance Corporation Act, 12 U.S.C. §§ 1811-1831 or the Federal Savings and Loan Insurance Corporation Act, 12 U.S.C. §§ 1724-1730.

(3) Certificates of deposit in banks that, upon issuance of the certificate, pledge collateral for the deposit with the Federal Reserve Bank pursuant to 12 C.F.R. § 9.10.

(b) In all other cases all monies paid into Court must be deposited either in a checking account in the United States Treasury or in an interest-bearing account in a designated local depository in accordance with Civil L.R. 67.4.

Civil L.R. 67.4 Withdrawal of Funds

The court order must contain a prohibition against withdrawal, except upon order of the Court. A certified copy of the order must be placed on file with the financial institution involved.

VIII. SPECIAL PROCEEDINGS

[Reserved.]

IX. CLERK OF COURT

Civil L.R. 77.1 Orders and Judgments Grantable by the Clerk of Court

Pursuant to the provisions of Fed.R.Civ.P. 77(c), the Clerk of Court or deputy clerk may enter the following orders and judgments without further direction by the Court, but the Clerk of Court's action may be suspended, altered or rescinded by the Court for cause shown:

(a) Consent orders for the substitution of attorneys;

(b) Except as otherwise provided by law, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, whether the amount of such bonds or undertakings has been fixed by a judge or by a court rule or statute;

(c) Consent orders dismissing an action, except in cases to which Fed.R.Civ.P. 23(c) and Fed.R.Civ.P. 66 apply;

(d) Orders canceling liability on bonds other than orders disbursing funds from the Clerk's Registry Account; and

(e) Consent orders regarding extensions of time for filing responses, supporting documents and briefs filed pursuant to Civil L.R. 7.1 for not more than 10 days.

X. GENERAL PROVISIONS

[Reserved.]

XI. ADMIRALTY AND MARITIME CLAIMS

Civil L.R. 100.1 Scope of Rules

Civil L.R. 100.1-100.8 apply to any claim governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

Civil L.R. 100.2 Pleadings and Parties

(a) Every complaint filed as a Federal Rules of Civil Procedure action must state "In Admiralty" following the designation of the court, in addition to the statement, if any, contained in the body of the complaint, pursuant to such rule. If the complaint contains a claim at law, it must state "at Law and in Admiralty".

(b) Every complaint in Supplemental Rule B and C actions must state the amount of the debt, damages, or salvage for which the action is brought. This amount must be included in the process, together with description of the nature of any unliquidated items claimed, such as attorneys fees. The defendant or claimant may give bond or stipulation in such amount, plus interest and costs including an amount stipulated to by the parties or fixed by the Court for an unliquidated item, unless a federal statute, procedure or court of applicable state statute requires some other amount.

(c) In cases of salvage, the complaint must state, to the extent known, or estimate the value of the hull, cargo, freight and other property salvors, and that the suit is instituted on their behalf and on behalf of all other persons interested or associated with them. An attachment to the complaint must also list all known salvors, all persons entitled to share in any salvage award, and a statement as to any agreement of consortship available and known to exist among them or any of them, together with a copy of any such agreement.

Civil L.R. 100.3 Verification of Pleadings, Answers to Interrogatories and Request for Admissions

Complaints in admiralty must be verified when Supplemental Rule B, C, or D so requires. Verification must be made by a party or by an officer of a corporate party. If no party or corporate officer is within the district or readily available, verification of complaint, claim, answer to interrogatories or request for admission may be made by an agent, attorney-in-fact or attorney of record, who must state the source of his or her knowledge, declare that the document affirmed is true to the best of his or her knowledge, state the reason why verification is not made by a party or a corporate officer, and state that he or she is authorized so to act. Any interested party may move the Court, with or without a request for stay, for the personal oath of a party or all parties, or that of a corporate officer. If required by the Court, such verification must be procured by commission or as otherwise ordered.

Civil L.R. 100.4 Suits In Forma Pauperis

Unless allowed by the Court, no process in rem must issue in forma pauperis suits, except upon proof of 24 hours' notice of the filing of the complaint to the owner of the res or the owner's agent.

Civil L.R. 100.5 Security for Costs

No complaint in Supplemental Rule B, C, D or F actions must be filed, except by the United States or by court order, unless the party offering the same filed Security for Cost as prescribed in Civil L.R. 67.2.

Civil L.R. 100.6 Summons to Show Cause Why Funds May Not Be Paid Into Court

A summons issued pursuant to Supplemental Rule C(3), dealing with freight or the proceeds of property sold or other intangible property, must direct the person having control of the funds, at a date fixed thereby which must be at least 10 days after service thereof (unless the Court, for good cause

shown, shortens the period) to show cause why said funds may not be paid into Court to abide the judgment. Funds paid into Court are subject to the provisions of Civil L.R. 67.4.

Civil L.R. 100.7 Publication Where Property Arrested

(a) Publication required by Supplemental Rule C(4) must be made once in a newspaper of general circulation within the district in which the arrest is made, designated by order of the Court.

(b) If the property arrested is not released within 10 days after execution of process, publication must be made by plaintiff or intervenor within 17 days after execution of process, unless otherwise ordered by the Court.

Civil L.R. 100.8 Publication of Notice of Sale

Notice of sale of property in suits in rem and quasi in rem, except in suits on behalf of the United States where other notice is prescribed by statute, must be caused by the United States Marshal to be published in the newspaper of largest general circulation within the district in which the seizure was made. Such publication must occur at least twice: the first at least 7 calendar days prior to the date of the sale and the second at least 3 calendar days prior to the date of sale, unless otherwise ordered by the Court.

PART C:

CRIMINAL RULES

I. SCOPE OF RULES

Criminal L.R. 1.1 Scope of Rules

The Criminal Rules set forth in Part C govern criminal and petty offense proceedings in this district.

II. GRAND JURIES

Criminal L.R. 6.1 Restrictions on Disclosure of Grand Jury Materials

Grand jury materials disclosed to the defense under Fed.R.Crim.P. 6(e) must not be disseminated in any way, other than in open court, by the defendant or by defense counsel except to the defendant himself or herself, to defense counsel and to those lawyers, support staff, or investigators assisting counsel directly, or to a witness to the extent that the materials consist of the witness' own prior testimony. Use of grand jury materials disclosed under this rule must be limited to the proceeding for which they were disclosed. Nothing in this rule prevents the government from seeking further restrictions by court order on the use or dissemination of such materials.

Criminal L.R. 6.2 Dissemination or Use of Grand Jury Materials

Any person who obtains grand jury materials pursuant to Criminal L.R. 6.1 is prohibited from otherwise disseminating or using the materials except by further order of the Court.

III. ARRAIGNMENT AND PREPARATION FOR TRIAL

Criminal L.R. 12.1 Pretrial Conferences

(a) In any case that is unusually complex, by reason of the number of parties, the novelty of legal or factual issues presented, the volume of discovery materials, or other factor peculiar to that case, the government must notify the Clerk of Court when the indictment or information is filed that the case is appropriate for a pretrial scheduling conference pursuant to Fed.R.Crim.P. 12(c) and 17.1. If the government has not suggested a pretrial scheduling conference, the defendant or defense counsel may do so at the initial appearance or arraignment. Any time between the arraignment and the date set by pretrial scheduling order for filing pretrial motions must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(8)(B)(ii), upon a specific finding and order by the judicial officer under § 3161(h)(8)(A).

(b) A pretrial scheduling conference pursuant to Criminal L.R. 12.1(a) and Fed.R.Crim.P.12(c) and 17.1 may be set by the judicial officer conducting the arraignment, by the judicial officer

assigned to pretrial proceedings, or by the judicial officer assigned to preside over the trial of the case. At a pretrial scheduling conference, the Court may set deadlines for filing pretrial motions, briefing, discovery and disclosure by all parties, hearings, trial, or any other dates that will further the ends of justice.

(c) In cases for which there will be no pretrial scheduling conference under Criminal L.R. 12.1(a), (b) and Fed.R.Crim.P. 12(c), upon oral motion by the defense at the arraignment the government must make available to the defendant, or to defense counsel, all information known to the government or in the government's possession falling within Criminal L.R. 16(b) if the government is following the open file policy, or if the government is not following the open file policy, all information within the scope of Fed.R.Crim.P. 12(d)(1) or 16(a) (other than material falling within Fed.R.Crim.P. 16(a)(1)(E)) within 5 days after the defendant's arraignment and plea on an indictment, other than for good cause shown. The government bears the burden of showing good cause for any failure of timely disclosure under this rule, and also has a continuing duty to disclose discoverable materials as they become available. If the defense moves for disclosure by the government under this rule, the defense is bound to the provisions of Fed.R.Crim.P. 16(b).

Criminal L.R. 12.2 Motions

(a) Unless otherwise provided by pretrial scheduling order in a specific case, all motions raising any issue described in Fed.R.Crim.P. 12(b) must be filed within 20 days after arraignment on an indictment. Unless otherwise provided by pretrial scheduling order in a specific case, the opponent must have 10 days to file a memorandum or other materials in response to any such motion. The movant then must have 5 days to file any reply.

(b) Any time between arraignment and the deadline set for filing pretrial motions must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(1). All time consumed under Criminal L.R. 12.2(a) or pursuant to pretrial scheduling order from the filing of pretrial motions, through responses, replies, any hearing, and the timely disposition of the motion, must be deemed excluded from the speedy trial deadline under 18 U.S.C. § 3161(h)(1)(F).

(c) If any motion seeks an evidentiary hearing, Criminal L.R. 12.3 applies and the defense is not required to file a supporting memorandum of law with the motion. If the movant does not seek an evidentiary hearing, then any supporting memorandum of law that the movant wishes to file must be filed at the same time as the motion.

Criminal L.R. 12.3 Evidentiary Hearing

If a motion seeks an evidentiary hearing, the movant must provide in the motion a short, plain statement of the principal legal issue or issues at stake and specific grounds for relief in the motion and, after a conference with the non-moving party, provide a description of the material disputed facts that movant claims require an evidentiary hearing. The movant also must provide an estimate of the in-court time necessary for the hearing. The non-moving party may file a response opposing an evidentiary hearing within 3 days after filing of a movant's motion seeking an evidentiary hearing.

The non-moving party's response must include a short, plain statement of why that party believes that an evidentiary hearing is unnecessary.

Criminal L.R. 16.1 Open File Policy

(a) At arraignment, the government must state on the record to the presiding judicial officer whether it is following the open file policy as defined in Criminal L.R. 16.1(b). If the government states that it is following the open file policy and the defense accepts such discovery materials, then the defendant's discovery obligations under Fed.R.Crim.P. 16(b) must arise without further government motion or request. If the government is following the open file policy, the government need not respond to and the Court must not hear any motion for discovery under Fed.R.Crim.P. 16(a) or 16(b) unless the moving party provides in the motion a written statement affirming (i) that a conference with opposing counsel was conducted in person or by telephone, (ii) the date of such conference, (iii) the names of the government counsel and defense counsel or defendant between whom such conference was held, (iv) that agreement could not be reached concerning the discovery or disclosure that is the subject of the motion, and (v) the nature of the dispute.

(b) As defined by the United States Attorney's Office, "open file policy" means disclosure without defense motion of all information and materials listed in Fed.R.Crim.P. 16(a)(1)(A), (B), and (D); upon defense request, material listed in Fed.R.Crim.P. 16(a)(1)(C); material disclosable under 18 U.S.C. § 3500 other than grand jury transcripts; reports of interviews with witnesses the government intends to call in its case-in-chief relating to the subject matter of the testimony of the witness; relevant substantive investigative reports; and all exculpatory material. The government must retain the authority to redact from open file material anything (i) that is not exculpatory and (ii) that the government reasonably believes is not relevant to the prosecution, or would jeopardize the safety of a person other than the defendant, or would jeopardize an ongoing criminal investigation. The defendant retains the right to challenge such redactions by motion to the Court.

(c) Unless these items contain exculpatory material, "open file materials" do not ordinarily include material under Fed.R.Crim.P. 16(a)(1)(E), government attorney work product and opinions, materials subject to a claim of privilege, material identifying confidential informants, any Special Agent's Report (SAR) or similar investigative summary, reports of interviews with witnesses who will not be called in the government"s case-in-chief, rebuttal evidence, documents and tangible objects which will not be introduced in the government's case-in-chief, rough notes used to construct formal written reports, and transcripts of the grand jury testimony of witnesses who will be called in the government's case-in-chief.

(d) Unless otherwise ordered by the Court, upon defense request materials described in Fed.R.Crim.P. 16(a)(1)(E) must be disclosed to the defense not later than 15 days before commencement of the trial, unless the government shows good cause for later disclosure. Grand jury transcripts of any and all witnesses the government intends to call at trial will be made available to the defense no later than one business day before commencement of the trial. The defense must disclose materials described in Fed.R.Crim.P. 16(b)(1)(C) as soon as reasonably practicable after the government's disclosure under Fed.R.Crim.P. 16(a)(1)(E), and in any event

not later than two business days before a defense expert witness testifies at trial, unless the defense shows good cause for later disclosure.

(e) In a case in which the government is following the open file policy, the defense must disclose materials described in Fed.R.Crim.P. 16(b)(1)(A) and (B) as soon as reasonably practicable, and in any event not later than 15 days before commencement of the trial, unless the defense shows good cause for later disclosure.

(f) If the government elects not to follow the open file policy described in Criminal L.R. 16.1(b), discovery must proceed pursuant to Fed.R.Crim.P. 16 and Criminal L.R. 12.1(c).

IV. SENTENCING

Criminal L.R. 32.1 Objections to Presentence Investigation

In any case in which the defendant has waived the time limitations under Fed.R.Crim.P. 32(b)(6), objections to a presentence investigation report must be filed in writing and served on the opposing party at least 10 days before the scheduled sentencing, unless otherwise provided by Court order.

Criminal L.R. 32.2 Confidentiality of Presentence Reports

(a) No confidential records of this Court maintained by the probation office, including presentence investigation reports and probation supervision records, must be disclosed except upon written petition to the Court establishing with particularity the need for specified information contained in such records. No disclosure shall be made except upon court order. Nothing in this rule shall be construed so as to deny the subject of any presentence report and/or the subject's counsel the right to review such presentence report without consent of the Court.

(b) Any copy of a presentence report which the Court makes available, or has made available, to the United States Parole Commission or the Bureau of Prisons, constitutes a confidential court document and must be presumed to remain under the continuing control of the Court during the time it is in the temporary custody of these agencies. Such copy shall be loaned to the Parole Commission and the Bureau of Prisons only for the purpose of enabling those agencies to carry out their official functions, including parole release and supervision, and must be returned to the Court after such use upon request. Disclosure of a report is authorized only so far as necessary to comply with 18 U.S.C. § 4208(b)(2).

V. MISDEMEANORS AND OTHER OFFENSES

Criminal L.R. 58.1 Generally

(a) In proceedings upon which no indictment is necessary (see Fed.R.Crim.P. 7(a)) deadlines in these local rules that run from arraignment on an indictment instead run from the entry of a not guilty plea on the trial document. (See Fed.R.Crim.P. 58(b)(1).)

(b) Except as provided in Criminal L.R. 58(c) below, the defendant in an action on an infraction as defined in 18 U.S.C. § 19, and which is listed specifically in a schedule published by order of the Court pursuant to this rule, may pay the collateral fixed on the citation or complaint, if any, in lieu of appearance and by doing so authorizes the termination of proceedings and a default judgment in the amount of the sum fixed, pursuant to Fed.R.Crim.P. 58(d). The voluntary forfeiture of collateral under this rule must be treated as a finding of guilt on the infraction charged in the citation or complaint. The attorney for the government and the Clerk of Court then may execute such judgment without further notice to the defendant. If a person charged with an infraction under this rule fails to post and forfeit collateral, any punishment authorized by law may be imposed upon a finding of guilt.

(c) Nothing in this rule precludes arrest or detention of any person accused of an infraction as defined by 18 U.S.C. § 19, or requiring the person accused to appear in person before a judicial officer, to the extent allowed by law.

Criminal L.R. 58.2 Trial of Misdemeanors and Other Petty Offense Cases

All misdemeanor and petty offense cases are randomly assigned to the magistrate judges in this district, who are authorized to conduct any or all proceedings in such matters. In all such cases in which the consent of the defendant is required, the magistrate judge must explain to the person charged that the person has a right to trial, judgment, and sentencing by a judge of the district court, and that the person may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge must not try the case unless the defendant consents to be tried before the magistrate judge, specifically waiving a trial, judgment, and sentencing by a district judge. If the defendant elects to be tried before a district judge, the magistrate judge must return the case to the Clerk of Court's office which must reassign the case to a district judge.